



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV - 6 2007

Elizabeth Kingsley, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, NW, Suite 600
Washington, DC 20036

RE: MUR 5820
Association of Community
Organizations for Reform Now;
Project Vote/Voting for America

Dear Ms. Kingsley:

On September 28, 2006, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 10, 2007, the Commission found, on the basis of the information in the complaint, and information provided by your clients that there is no reason to believe the Association of Community Organizations for Reform Now and Project Vote/Voting for America violated 2 U.S.C. §§ 433 and 434(a), provisions of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "MSH", followed by a long horizontal line.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondents: Association of Community Organizations
for Reform Now (ACORN)
Project Vote/Voting for America

MUR 5820

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by Manuel I. Iglesias against the Association of Community Organizations for Reform Now ("ACORN"), a non-profit organization whose mission is to increase civic involvement and political participation in low and moderate-income and minority communities, and Project Vote/Voting for America ("Project Vote"), a non-profit organization that provided funding for voter registration efforts. *See* 2 U.S.C.

§ 437g(a)(1). This matter involves allegations that ACORN and Project Vote/Voting for America ("Project Vote"), a non-profit organization that provided funding for voter registration and get-out-the-vote ("GOTV") efforts in Florida, violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act") by (1) failing to register as political committees, and (2) failing to file disclosure reports. Complaint at 2; *see* 2 U.S.C. §§ 433 and 434(a). For the reasons set forth below, the Commission finds no reason to believe that the Association of Community Organizations for Reform Now and Project Vote/Voting for America violated 2 U.S.C. §§ 433 and 434.

II. FACTUAL AND LEGAL ANALYSIS

The Complaint provides a copy of a document called the "Floridians For All" Campaign Plan, attributed to ACORN, which states that the objective of the 2004 GOTV campaign was to "defeat George W. Bush and other Republicans by increasing Democrat

(sic) turnout in a close election.” Complaint at 1. ACORN and Project Vote assert that the document that is the basis for the Complaint was an early draft prepared by a local ACORN organizer that was never approved or adopted. ACORN Response at 4. ACORN contends that it rejected the partisan proposals in this early draft, and that its 2004 Florida voter registration and mobilization effort was entirely non-partisan and conducted in compliance with the FECA. ACORN Response at 3.

In support of its position, ACORN submits a declaration from Brian Kettenring, who attests that he drafted the “Floridians for All” document cited by the Complaint without supervision or input from the ACORN national staff. ACORN Response, Attachment 1, Declaration of Brian Kettenring, (“Kettenring Decl.”) at ¶¶ 1-2. Mr. Kettenring states that he did not have authority to implement any statewide campaigns without authorization, and that after submitting the draft to ACORN’s National Staff Director, he was informed that it was unacceptable and needed to be re-written.¹ *Id.* at ¶¶ 3-4. ACORN asserts that the document attached to the Complaint was a copy of Mr. Kettenring’s unedited, unapproved and unimplemented draft that may have been retained by a disgruntled former employee.² *Id.* at ¶ 6.

Respondents maintain that ACORN’s actual voter registration and mobilization efforts were non-partisan, and that no literature used by ACORN in its voter registration

¹ ACORN National Staff Director submitted a declaration stating that Kettenring did not have the authority to commit ACORN to a campaign that utilized national resources without approval from national staff. ACORN Response, Attachment 2, Declaration of Steve Kest (“Kest Decl.”) at ¶ 3. This declaration further states that the national ACORN staff did not approve the original draft, precisely because it included statements, provisions or purposes that were partisan and did not represent why ACORN wanted to increase the minimum wage. *Id.* at ¶ 6.

² Kettenring attests that after receiving instructions from the ACORN national staff to remove all partisan references and goals, the draft document contained in the Complaint was given to an employee to edit, who left ACORN shortly thereafter on bad terms. The revised drafts of the document are attached as Exhibits A & B to Kettenring’s Declaration.

or GOTV campaigns, including the final version of the "Floridians for All" ballot initiative campaign plan, contained any reference to or endorsement of any party or candidate.³ Kettenring Decl. at ¶¶ 6-7 and 11. Respondents maintain that "walk lists" used by canvassers did not contain information that would indicate party or voting preferences, and that the person responsible for the program was specifically instructed by ACORN to leave references to party preferences off all walk lists and not to use party affiliation as a filter in selecting addresses.⁴ *Id.* at ¶ 12.

The Act defines a "political committee" as any committee, club, association or other group of persons that receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A) and 11 C.F.R. §§ 100.5(a), 102.1(d). The Act requires such political committee to register with the Commission and file the appropriate reports disclosing its receipts and disbursements to the public. 2 U.S.C. §§ 433 and 434(a). For the purpose of triggering political committee status, the Act defines the terms "contributions" and "expenditures" as including "anything of value made by any person for the purpose of influencing any election for Federal office." *See* 2 U.S.C. § 431(8)(A)(i), (9)(A)(i).

³ Project Vote is a non-profit organization, which provided funding to ACORN's 2004 voter registration and GOTV activities. Project Vote's Executive Director, Zach Polett submitted a declaration stating that the Joint Effort Agreement between Project Vote and ACORN "specifically requires that ACORN conduct its activity in a 'scrupulously non-partisan manner.'" Polett Decl. at 2. Polett declares that none of the ACORN activities that Project Vote funded or oversaw included any public communication that referred to any federal, state or local candidate or political party. *Id.* at ¶ 4.

⁴ In support of this assertion, Respondents submit the declaration of Robert Lelievre, owner of Lelievre Information Services, a company that developed the computer application that generated the walk lists used by ACORN for canvassing. ACORN Response, Declaration of Robert Lelievre ("Lelievre Decl.") at ¶ 1. Mr. Lelievre states that in generating the walk lists, he used the voter data provided by the State of Florida and he used the entire list without screening or filtering voters for party affiliation. *Id.* at ¶¶ 2-3. He further attests that ACORN specifically asked him to exclude party affiliation fields from any information that was to be printed on the ACORN walk lists. *Id.* at 4.

Complainant alleges that ACORN and Project Vote failed to register as a political committee with the Commission, and failed to file disclosure reports. Complaint at 6-7; *see* 11 C.F.R. §§ 104.5(c)(2) and 109.10. Specifically, Complainant contends that the voter registration and GOTV campaigns sponsored by ACORN and Project Vote were partisan in nature, and therefore expenditures associated with these events, which were valued in excess of \$1,000, should have been disclosed to the public.

A review of the information contained in the Complaint and Responses, as well as that which is publicly available, does not support Complainant's claims that the voter registration and GOTV efforts undertaken by ACORN or Project Vote were partisan. Complainant submits the unsigned ACORN memorandum as evidence that the voter registration and GOTV campaign sponsored by ACORN and Project Vote in support of the Florida minimum wage initiative included expenditures made for the purpose of influencing a federal election. ACORN submits two affidavits from individuals responsible for drafting the plan for the Florida voter registration and GOTV effort in support of the minimum wage initiative, both of whom swear that the ideas reflected in the original draft were stricken from subsequent drafts and never disseminated or implemented. Additionally, ACORN and Project Vote submitted declarations from staff in charge of the effort affirming that, "No effort was made to determine party or candidate preference before encouraging individuals to register to vote; voter registration efforts were not directed to those previously registered or intending to register with any political party; get-out-the-vote efforts were not directed on the basis of party affiliation." ACORN Response at 11-12, Polett Decl. at ¶ 4.

Given that the available information indicates that the actual ACORN and Project Vote effort (as opposed to the first draft of a planning document) did not include express advocacy, *see* 11 C.F.R. § 100.22, and there is no other information to suggest ACORN and Project Vote made expenditures, there is no basis for investigating the claim that Respondents are political committees. Accordingly, the Commission finds no reason to believe that the Association of Community Organizations for Reform Now and Project Vote/Voting for America failed to register as political committees and failed to file disclosure reports, in violation of 2 U.S.C. §§ 433 and 434(a).

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